

Exhibit 1

00001

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 -----

4 PHILIP WONG, FREDERICK CHAUSSY,

5 and LESLIE MARIE SHEARN,

6 Individually, on behalf of all

7 other similarly situated, and

8 on behalf of the general public,

9

10 Plaintiffs,

11 - vs - Case No. 3:07-cv-2446 MMC

12

13 HSBC MORTGAGE CORPORATION (USA);

14 HSBC BANK USA, N.A.; and

15 DOES 1 through 50, inclusive.,

16

17 Defendants.

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19 Videotaped deposition of ROBERT W.

20 LAMPKA, taken pursuant to Subpoena duces tecum

21 under the Federal Rules of Civil Procedure, in the

22 law offices of PHILLIPS LYTLE LLP, 3400 HSBC

23 Center, Buffalo, New York, on March 19, 2008,

24 commencing at 9:10 a.m., before RICHARD B. WHALEN,

25 CM, Notary Public.

00002

1 APPEARANCES: NICHOLS KASTER & ANDERSON, LLP,

2 By BRYAN J. SCHWARTZ, ESQ.,

3 One Embarcadero Center,

4 Suite 720,

5 San Francisco, California 94111,

6 (415) 277-7235, (f) (415) 277-7238,

7 Appearing for the Plaintiffs.

8

9 HSBC BANK USA, NATIONAL ASSOCIATION,

10 Office of General Counsel,

11 By SCOTT D. MILLER, ESQ.,

12 Deputy General Counsel,

13 One HSBC Center,

14 Buffalo, New York 14203,

15 (716) 841-4230, (f) (716) 642-1554

16 Appearing for the Defendants.

17

18 PHILLIPS LYTLE LLP,

19 By PRESTON L. ZARLOCK, ESQ.,

20 3400 HSBC Center,

21 Buffalo, New York 14203,

22 (716) 847-5496, (f) (716) 852-6100

23 Appearing for the Witness.

24

25 PRESENT: MATTHEW W. MESSING, Videographer.

00123

1 knowledge.

2 Would your answer be the same?

3 MR. ZARLOCK: Same objection as to legal

4 conclusion.

5 You can answer.

6 MR. MILLER: Objection to the form.

7 THE WITNESS: Again, based on the

8 descriptions and if they were consistent from --

9 from rewrite to rewrite, this would definitely hold

10 true. It is not a professional-level position.

11 It's not requiring advanced knowledge.

12 BY MR. SCHWARTZ:

13 Q. Okay. Now moving on to the

14 administrative exemption, I under -- if I

15 understand correctly, you concluded in 2002 that

16 the administrative exemption does not apply to the

17 retail mortgage lending consultant or senior retail

18 mortgage lending consultant position, correct?

19 A. That is correct.

20 Q. And to the best of your knowledge, has

21 that always been the case, that the administrative

22 exemption does not apply to these positions?

23 MR. ZARLOCK: Objection to the form.

24 THE WITNESS: To the best of my knowledge,

25 again based on the description at the time, it

00124

1 would not apply.

2 BY MR. SCHWARTZ:

3 Q. When you say "the description at the
4 time," my question was at any time, so based on the
5 descriptions of these positions as they've existed
6 over the years --

7 A. Well --

8 Q. -- has the administrative exemption
9 ever applied to these positions?

10 MR. ZARLOCK: Object to the form of the
11 question.

12 You can answer.

13 MR. MILLER: Yes, same objection.

14 THE WITNESS: We only have one version here
15 plus a couple of other versions that are further in
16 the documentation.

17 Based on what's here, I'd have to reassess
18 the descriptions, the various descriptions against
19 this to -- to validate that, but to my knowledge,
20 since it's always been exempt, this would not apply
21 as well.

22 BY MR. SCHWARTZ:

23 Q. "Since it's always been exempt, this
24 would not apply." I'm not sure I understand that.

25 A. As documented in the PeopleSoft --

00125

1 Q. Uh-huh.

2 A. -- shots showing the exempt status of
3 the lending consultant jobs --

4 Q. Right.

5 A. -- they've always been exempt.

6 Q. Right. But this is saying that there's
7 no exemption that applies with respect to the
8 administrative exemption, right?

9 MR. ZARLOCK: "This" referring to L-14?

10 BY MR. SCHWARTZ:

11 Q. "This," I'm still -- pages L-14 and 15
12 of Exhibit 2.

13 A. This is, yes. And that's referring to
14 the description on pages L-12 and L-13.

15 Q. Okay. But to your knowledge, has --
16 has HSBC ever applied the administrative exemption
17 with respect to the retail mortgage lending
18 consultant and senior retail mortgage lending
19 consultant positions?

20 A. Not to my knowledge.

21 Q. And why -- why does the administrative
22 exemption not apply to the retail mortgage lending
23 consultant and senior retail mortgage lending
24 consultant positions?

25 MR. ZARLOCK: Objection to the form.

00126

1 THE WITNESS: You have to answer all of the
2 questions "yes" in the exemption category for the
3 job to be exempt. And the decision in 2002 was
4 that none of the questions fit the role; therefore,
5 that exemption would not apply.

6 BY MR. SCHWARTZ:

7 Q. Okay. But briefly in your words, just
8 as did you with professional exemption and the
9 executive exemption, please describe why the
10 administrative exemption does not apply, has never
11 applied to the retail mortgage lending consultant
12 and senior retail mortgage lending consultant.

13 MR. MILLER: Objection to the form.

14 MR. ZARLOCK: Objection to the form.

15 THE WITNESS: Based on 2002, I would say
16 that item 3 in particular, which talks of assisting
17 a bona fide executive or administrative employee
18 performing work under specialized or technical
19 lines and executing special assignments or tasks,
20 that would not apply to the position.

21 BY MR. SCHWARTZ:

22 Q. Okay. Now, you're referring to -- are
23 you referring only to 2002? Or is that -- does
24 that apply generally as long as these positions
25 have existed to the best of your knowledge?

00127

1 A. I can speak of 2002 based on what's
2 here. I could -- my assumption would be that the
3 same thing would apply for other years, again
4 depending on what the description said at that
5 point in time.

6 Q. Okay. Well, you've provided copies of
7 all the descriptions that have applied since
8 1901 -- I'm joking, but since 1995 for -- for these
9 positions in L-46 through 52.

10 Take whatever time you need look at those
11 and just tell me if the same statements you just
12 made regarding the administrative exemption have
13 applied throughout the existence of that position
14 to the best of your knowledge?

15 MR. ZARLOCK: Just let me just clarify the
16 question. Are you asking were they applied or
17 would they apply?

18 MR. SCHWARTZ: I'm -- I'm asking both.

19 BY MR. SCHWARTZ:

20 Q. Have they ever been applied with
21 respect --

22 MR. ZARLOCK: Okay. Let me -- let me -- let
23 me clarify my point. I -- I -- if the question is
24 "to your knowledge, were they applied," then
25 probably I'm not going to object to the form.

00128

1 But if you're asking -- if you're asking "do
2 they apply," then I am going to object. I mean,
3 he'll still answer the question, but it's a
4 difference in how you're asking the question.

5 BY MR. SCHWARTZ:

6 Q. Okay. I'm asking with respect to the
7 administrative exemption, you've just explained
8 several reasons why the administrative exemption
9 did not apply in 2002 to the retail mortgage
10 lending consultant and senior retail mortgage
11 lending consultant position.

12 And now I'm asking having an opportunity to
13 look at the job descriptions for this position and
14 to the best of your recollection, would those same
15 reasons for not applying the administrative
16 exemption, do those apply across all of the years
17 of the existence of the position?

18 MR. ZARLOCK: And then I'm going to object
19 to the form of the question for a variety of
20 reasons, but incomplete hypothetical at the very
21 least.

22 MR. MILLER: Object to the form.

23 THE WITNESS: As the descriptions read, it
24 appears there's been minimal change over the years.
25 It would be more appropriate to do this in -- with

00129

1 more time and to take a look individually at each
2 description and -- and assessing.

3 But based on 2002 and the description not
4 changing, then, yes, that would -- the
5 administrative exemption would not apply.

6 BY MR. SCHWARTZ:

7 Q. Would you agree also that the primary
8 duty of the retail mortgage lending consultant and
9 senior retail mortgage lending consultant positions
10 has always been selling mortgages?

11 MR. ZARLOCK: Objection to the form.

12 MR. MILLER: Yeah, objection to the form.

13 THE WITNESS: Yes.

14 BY MR. SCHWARTZ:

15 Q. Continuing on to the outside sales
16 exemption, you found in 2002 that the outside sales
17 exemption did apply to the retail mortgage lending
18 consultant and senior retail mortgage lending
19 consultant positions?

20 Right?

21 A. Yes.

22 Q. And so is it safe to say that that was
23 the reason why you -- you in cooperation with
24 Mr. Schiavi concluded that this was an exempt
25 position was because of the outside sales

00130

1 exemption?

2 MR. ZARLOCK: Form.

3 You can answer.

4 THE WITNESS: In addition with Sarah being
5 involved as well, yes.

6 BY MR. SCHWARTZ:

7 Q. Right. I'm sorry. I don't mean to
8 keep leaving her out. It's not just because she
9 has the longest name.

10 So have the reasons for applying the outside
11 sales exemption to the senior retail mortgage
12 lending consultant and retail mortgage lending
13 consultant position, have those reasons remained
14 consistent through the years to the best of your
15 recollection?

16 MR. ZARLOCK: Form.

17 You can answer.

18 MR. MILLER: Yeah, objection to the form.

19 THE WITNESS: Yes, they have.

20 BY MR. SCHWARTZ:

21 Q. And could you explain in your own words
22 all of the reasons that you believe that the
23 outside sales exemption applies to these -- the
24 senior retail mortgage lending consultant and
25 retail mortgage lending consultant positions?

00131

1 MR. ZARLOCK: Just objection to the form.

2 Are you asking him as to his 2006 review of it

3 or -- okay, I don't know when he last reviewed the

4 issue.

5 BY MR. SCHWARTZ:

6 Q. What are all the reasons that you can

7 recall that have -- that have been applied at any

8 time that relate to why HSBC has concluded that the

9 outside sales exemption applies to the retail

10 mortgage lending consultant and senior retail

11 mortgage lending consultant position?

12 MR. ZARLOCK: Objection to the form.

13 You can answer.

14 MR. MILLER: Objection to the form.

15 THE WITNESS: And in what year are you

16 speaking of?

17 BY MR. SCHWARTZ:

18 Q. At any time. You've already said that

19 the reasons haven't changed much, so I don't know

20 that it's that significant.

21 A. The understanding has been that the

22 role is selling mortgages to customers, which meets

23 part 1A of the exemption in 2002.

24 They are -- the bank is receiving income

25 because of that, which fits part 1B. And they are

00132

1 doing it from a -- typically from a loan production
2 office but doing it in most cases at the customer's
3 site or with a realtor and the customer.

4 Q. And the -- the testimony you just gave
5 that they are doing it typically from a loan
6 production office or doing it in most cases from a
7 customer site or from a -- or with a realtor from a
8 real estate office, what is the source of your
9 information that that is true of senior retail
10 mortgage lending consultants and mortgage
11 lending -- and retail mortgage lending consultants?

12 MR. ZARLOCK: Objection as to time frame of
13 "source."

14 But go ahead.

15 THE WITNESS: Numerous conversations over
16 the years with either HR and/or Mortgage
17 Management, Mortgage Sales Management.

18 BY MR. SCHWARTZ:

19 Q. At any time, have you spoken with a
20 senior retail mortgage lending consultant or a
21 retail mortgage lending consultant in order to
22 assess the accuracy of that conclusion that they
23 typically are selling loans from a customer's site
24 or at realtor offices?

25 A. Not to my knowledge.

00133

1 Q. When you say numerous conversations
2 over the years with Human Resources or the Mortgage
3 Sales Management, are we -- are you referring
4 specifically to Jeanie Jennings, Mr. Schiavi, and
5 Mr. Gates?

6 A. I can speak specifically to 2006 when I
7 had a conversation with Jeanie Jennings, who in
8 turn had a conversation with Sales, Mortgage Sales.
9 I believe it was David Gates.

10 Q. That you had one conversation with
11 Ms. Jennings on this point in 2006?

12 A. Yes.

13 Q. What about -- I'm going to ask you more
14 about that conversation, but what about at other
15 times?

16 You mentioned numerous conversations over
17 the years with Human Resources and Mortgage Sales
18 Management.

19 What are the other occasions that you had
20 conversations on this point of -- that the notion
21 that the senior retail mortgage lending consultants
22 and retail mortgage lending consultants are selling
23 loans from a customer's site or at real estate
24 offices?

25 MR. MILLER: Object to the --

00134

1 THE WITNESS: I can't --

2 MR. MILLER: -- form.

3 THE WITNESS: I can't recall specific dates
4 or individuals.

5 BY MR. SCHWARTZ:

6 Q. I'm not -- I'm not asking -- I -- I
7 would be blown away if you could remember that on
8 June 2nd, 2003, you had a conversation or something
9 of that nature. That's not what I'm asking.

10 But generally speaking, did you have -- who
11 did you speak to on this subject matter
12 regarding -- around the time of the 2002
13 compensation study?

14 A. Sarah was the individual that was
15 leading -- was -- was handling this particular
16 function. Whether she had any conversations with
17 somebody at that point in time, I'm not certain.

18 Q. What about -- so if I understand
19 correctly, then in around the 2002 compensation
20 study, you did not speak to anybody in Human
21 Resources or Mortgage Sales Management relating to
22 the outside sales classification exemption and its
23 application to the senior retail mortgage lending
24 consultants and retail mortgage lending
25 consultants?

00135

1 MR. ZARLOCK: Objection to the form.

2 MR. MILLER: Could you -- could you read the
3 question back, please?

4 (The above-requested question was then read
5 by the reporter.)

6 MR. ZARLOCK: Same objection.

7 THE WITNESS: I specifically did not but the
8 destructions that I have always given people such
9 as Sarah who reported to me at the time or Steve
10 now who does not report to me but does some work
11 for me in this regard is always to err on the side
12 of conservative in FLSA designations.

13 So to -- if there's any question as to what
14 designation belongs, question Management and/or HR
15 depending on the time period this study was done
16 because our process was slightly different. And if
17 in doubt, the job is nonexempt.

18 BY MR. SCHWARTZ:

19 Q. Uh-huh. So were you in doubt in 2006
20 when you spoke to Jeanie Jennings about the outside
21 sales exemption and these positions?

22 A. Could you expand on your question?

23 Q. Is that what provoked the conversation
24 with Ms. Jennings about the outside sales exemption
25 relating to these positions, senior retail mortgage

00136

1 lending consultant and retail mortgage lending

2 consultant?

3 MR. MILLER: Objection to the form.

4 MR. ZARLOCK: Objection to the form.

5 You can answer.

6 THE WITNESS: At times, there is, shall I

7 call it trade talk among compensation professionals

8 saying that there may be some positions you may

9 want to take a closer look at because of maybe

10 potential legal issues that are ongoing outside the

11 company.

12 BY MR. SCHWARTZ:

13 Q. Tell me about what trade talk you had

14 with compensation professionals that led to your

15 conversation with Ms. Jennings about the outside

16 sales exemption and whether it applied to retail

17 mortgage lending consultants and senior retail

18 mortgage lending consultants?

19 MR. ZARLOCK: Objection to the form.

20 You can answer.

21 THE WITNESS: Karen Wlodarek, who I

22 mentioned earlier, she was actually hired as an

23 outside consultant for us in Compensation to assist

24 on various compensation-related tasks.

25 During the 2005-2006 time frame, she was

00137

1 doing a study more for the incentive side of
2 Mortgage Sales to make sure we are -- were paying
3 our people appropriately from an incentive
4 perspective.

5 She said that she might want to pay close
6 attention, and it was similar to what I said
7 earlier, take a close look at this because some
8 other firms, and again it would depend on their
9 description.

10 So you can't take it blanket just because
11 one company does it one way, it means we do because
12 again going back to our loan officer conversation
13 earlier, title doesn't drive FLSA. It's the
14 description that does.

15 So while a job may be a sales officer here
16 and a sales officer somewhere else, the duties may
17 be different enough to warrant a distinction. But
18 for us internally based on her comments to us, that
19 precipitated my conversations with Jeanie.

20 And based on the fact of there being no
21 doubt in my mind that the exempt status remained,
22 the exempt status was recommended and approved by
23 HR and David Gates.

24 BY MR. SCHWARTZ:

25 Q. What -- what did Ms. Wlodarek say to

00138

1 you specifically about -- about these -- about loan
2 officers and the outside sales exemption?

3 A. I can't answer to specifics. I can
4 only say she said in so many words, there's some
5 lawsuits out there, just take a look at it based on
6 your own job, and make sure that you're comfortable
7 with what you come up with.

8 Q. Now, you said that after doing that --
9 well, and I'm going to get to what you discussed in
10 a minute with Ms. Jennings.

11 But you said there was no -- well, I guess,
12 why don't -- tell -- tell me everything you can
13 remember about your conversation with Ms. Jennings
14 in 2006 relating to the outside sales exemption and
15 its application to senior retail mortgage lending
16 consultants and retail mortgage lending
17 consultants.

18 A. I can't recall specific things I said
19 in 2006, but I would have spoken to her about --

20 MR. ZARLOCK: Just for clarification, don't
21 testify -- don't speculate as to what you talked
22 about. If you have a general recollection, you may
23 testify to it, but don't speculate.

24 THE WITNESS: Okay. The general
25 recollection would be, "Here's what the outside

00139

1 exemption is. What do our people do? Does what
2 our people do fit this or don't fit this?"

3 BY MR. SCHWARTZ:

4 Q. And what did she tell you?

5 A. Again, specifics, I don't recall, but
6 in generalities, the outside sales exemption she
7 felt was still appropriate as did the Line as did
8 myself.

9 Q. As did the Line?

10 A. Business Management, David Gates.

11 Q. Okay. Yeah. I mean, I understand you
12 told me earlier what your conclusion was but how
13 did you get there?

14 I mean, what happened in that discussion,
15 what was discussed?

16 A. Again --

17 Q. I'm -- I'm not asking you to quote her
18 but what -- what was the -- why did you feel it
19 still applied? Why did she feel it still applied?
20 What facts were discussed that you -- that -- that
21 were relevant?

22 A. It was all verbal conversation. I
23 don't have record of it but I can -- I know that if
24 it was any doubt that it should have been
25 nonexempt, I would have made it such. And I --

00140

1 again, I have no doubt.

2 Q. But you don't know why you had no doubt

3 at this point, you don't know what facts led you to

4 have no doubt that the outside sales exemption

5 applies to senior retail mortgage lending

6 consultants and retail mortgage lending

7 consultants?

8 A. Again, it would have been what Jeanie

9 and I spoke about at that time relative to the

10 guidelines.

11 MR. ZARLOCK: Is there anything in the

12 documents that would help you?

13 BY MR. SCHWARTZ:

14 Q. Yeah, I have no -- I have no problem

15 with you referring -- it's not a memory test. I

16 just want to know what the facts were that you were

17 considering. So if there's anything that would

18 refresh your recollection here, by all means, let

19 us know.

20 A. Basically the outside sales test was

21 simplified from the 2004 changes to the two items

22 that are on the bottom of page L-56.

23 It -- it was confirmed that the sales

24 consultant position was -- was regularly away from

25 the employee's place of business selling and

00141

1 obviously they're -- they're selling mortgage

2 products the bank gets income from.

3 Q. Okay. Well, what -- what facts did --

4 how -- what facts were discussed between you and

5 Ms. Jennings as to the notion that they were --

6 that these loan officers were regularly away from

7 their place of business?

8 A. Again, you're asking me to recall

9 specifics that I don't -- that I don't recall. I

10 can tell you that, as I said before, we talked of

11 the fact is the person away from their office

12 selling, which is basically what item number 1

13 under the outside sales exemption test is. And it

14 was confirmed that yes, that is indeed the case.

15 Q. Confirmed by whom?

16 A. Jeanie and talking through David Gates.

17 Q. In other words, Ms. Jennings spoke to

18 Mr. Gates and relayed to you that it was confirmed

19 that loan officers were regularly away from their

20 place of business at the Mortgage Corporation?

21 A. Yes.

22 Q. And you don't recall any other details

23 at all as to facts that led to that conclusion that

24 they were regularly away?

25 A. No.

00147

1 their loan production office or home office, if
2 that be the case.

3 BY MR. SCHWARTZ:

4 Q. And would you also include in that loan
5 production office home office or a bank branch?

6 MR. ZARLOCK: Objection to the form.
7 Compound.

8 MR. MILLER: Yeah, objection to the form.

9 THE WITNESS: Repeat your question, please.

10 BY MR. SCHWARTZ:

11 Q. If -- if -- in order for an employee to
12 be -- a loan officer to be classified to be -- to
13 fall under the outside sales exemption that they
14 would need to spend a majority of their time
15 outside of a home office, loan production office,
16 or bank branch.

17 Is that correct?

18 MR. ZARLOCK: Form.

19 You can answer.

20 THE WITNESS: That would be correct.

21 BY MR. SCHWARTZ:

22 Q. And when -- and by majority, of course,
23 you mean greater 50 percent; is that right?

24 MR. MILLER: Objection to form.

25 MR. ZARLOCK: Form.

00148

1 You can answer.

2 THE WITNESS: Yes.

3 BY MR. SCHWARTZ:

4 Q. Is -- other than what Ms. Jennings told
5 you, do you have any other evidence of any kind
6 that would establish -- or have you had any
7 evidence of any kind that would establish that loan
8 officers typically spend greater than 50 percent of
9 their time outside of their home office, loan
10 production office, or bank branch?

11 A. Repeat your question, please?

12 Q. Other than your conversation with
13 Jeanie Jennings, have you ever had any evidence of
14 any kind that loan officers at the Mortgage
15 Corporation typically spend more than 50 percent of
16 their time outside of loan production office, bank
17 branch, or home office?

18 MR. ZARLOCK: Objection to the form.

19 THE WITNESS: No.

20 BY MR. SCHWARTZ:

21 Q. So you're relying entirely on her for
22 that understanding?

23 MR. ZARLOCK: Same objection.

24 THE WITNESS: Yes, but the way the HR model
25 is to work, we are to work through HR who is to in

00149

1 turn work with the business. If I had any doubt, I
2 would speak directly with the Line or, in this
3 case, David Gates.

4 BY MR. SCHWARTZ:

5 Q. Well, what about at any time prior to
6 this 2006 compensation study, did you have any
7 evidence that loan officers spent more than
8 50 percent of their time away from an HSBC facility
9 or a home office?

10 A. No.

11 Q. Did Mr. Schiavi make that assertion to
12 you?

13 A. Make what assertion?

14 Q. That loan officers spend more than
15 50 percent of their time away from an HSBC facility
16 or home office.

17 A. He didn't indicate anything to the
18 contrary.

19 Q. Why -- why did you assume that they
20 spent more than 50 percent of their time away from
21 an HSBC facility or their home office without any
22 evidence?

23 A. Based on the job description not
24 changing essentially since the first document in
25 here.

00230

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and

6 for the State of New York, that I did attend and

7 report the foregoing deposition, which was taken

8 down by me in a verbatim manner by means of machine

9 shorthand. Further, that the deposition was then

10 reduced to writing in my presence and under my

11 direction. That the deposition was taken to be

12 used in the foregoing entitled action. That the

13 said deponent, before examination, was duly sworn

14 to testify to the truth, the whole truth and

15 nothing but the truth, relative to said action.

16

17

18

19 -----

20 RICHARD B. WHALEN, CM,

21 Notary Public.

22

23

24

25